

Government of the District of Columbia
Department of Insurance and Securities Regulation

Lawrence H. Mirel
Commissioner



IN THE MATTER OF

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INC.

ADMINISTRATIVE ORDER

ORDER NO. SB-03-01

ORDER GRANTING WAIVER

WHEREAS, from July 1, 1999 to June 30, 2001 (the "relevant period"), Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") was, and is at the present time, a broker-dealer registered in the District of Columbia; and

WHEREAS, Merrill Lynch has entered into a settlement with the District of Columbia Department of Insurance and Securities Regulation, (the "DISR") and States and another U.S. territory (collectively, "States") in connection with an investigation into possible analyst conflicts of interest (hereinafter referred to as "the Research Settlement"); and

WHEREAS, in connection with the Research Settlement, Merrill Lynch agreed to pay, and has paid, five hundred thousand dollars (\$500,000.00) to the District of Columbia, and a total of \$100 million to the States and the North American Securities Administrators Association ("NASAA"), and agreed to make certain changes in its research analyst procedures; and

WHEREAS, Merrill Lynch has settled, without admitting or denying the alleged findings, a joint investigation by the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), and the Securities and Exchange Commission ("SEC") in connection with analyst conflicts of interests (hereinafter referred to as "the Federal Settlement"); and

WHEREAS, Merrill Lynch consented to the entry of a final Federal Judgment enjoining the firm from violations of Section 15(c) of the Exchange Act and Rule 15(c)1-2 thereunder, as well as NASD Rules 2110, 2210, and 3010 and NYSE Rules 342, 401, 472, and 476; and

WHEREAS, Merrill Lynch, in the Federal Settlement made an undertaking to, among other things, adopt policies reasonably designed to separate its research and investment banking services, to disclose any potential investment banking relationship in its research reports and to contract with independent research providers for five years for the purpose of making independent research available to its customers; and

WHEREAS, Merrill Lynch has entered into settlement agreements with the NASD and the NYSE in which Merrill Lynch, without admitting or denying the underlying factual allegations, consented to a Settlement Agreement: (i) finding that Merrill Lynch violated federal provisions and NASD and NYSE rules, (ii) censuring Merrill Lynch and (iii) requiring Merrill Lynch to make payments in accordance with the Federal Settlement; and

WHEREAS, the entry of the injunction against Merrill Lynch provides a basis for disqualifying Merrill Lynch and affiliated issuers, based on their relationship with Merrill Lynch, from eligibility for certain exemptions and/or registration provisions under the Securities Act of 2000 (the "Securities Act"), D.C. Official Code §§ 31-4604.01 and 31-4604.02; and exemptions applicable to transactions involving securities offered or sold in compliance with Rules 501, 502, 503, and 505 of SEC Regulation D, 17 C.F.R. Sec. 230.501 (1990); 17 C.F.R. Sec. 230.502 (1990); 17 C.F.R. Sec. 230.503 (1990); 17 C.F.R. Sec. 230.505 (1990); and

WHEREAS, in connection with the Federal and Research Settlements, the SEC explicitly acknowledged that Merrill Lynch was seeking waivers of disqualification under various statutory provisions, including state laws, and that the SEC staff did not oppose such waivers;

NOW THEREFORE, the Commissioner of the Department of Insurance and Securities Regulation hereby finds:

In light of the terms and conditions of the Research Settlement with the District of Columbia and the States and territories, the Commissioner does not find that disqualification from eligibility

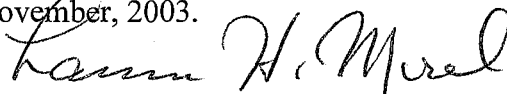
for certain exemptions and/or registration provisions in the District of Columbia under D.C. Official Code §§ 31-4604.01 and 31-4604.02 of the Act; and exemptions applicable to transactions involving securities offered or sold in compliance with Rules 501, 502, 503, and 505 of SEC Regulation D, 17 C.F.R. Sec. 230.501 (1990); 17 C.F.R. Sec. 230.502 (1990); 17 C.F.R. Sec. 230.503 (1990); 17 C.F.R. Sec. 230.505 (1990) of Merrill Lynch, and issuers based on their relationship with Merrill Lynch, would be in the public interest, and finds that such disqualification is not necessary for the protection of investors in the District of Columbia;

IT IS THEREFORE ORDERED that:

Any disqualification pursuant to D.C. Official Code §§ 31-4604.01 and 31-4604.02 of the Securities Act; and/or exemptions applicable to transactions involving securities offered or sold in the District of Columbia in compliance with Rules 501, 502, 503, and 505 of SEC Regulation D, 17 C.F.R. Sec. 230.501 (1990); 17 C.F.R. Sec. 230.502 (1990); 17 C.F.R. Sec. 230.503 (1990); 17 C.F.R. Sec. 230.505 (1990) that is applicable to Merrill Lynch, Pierce, Fenner & Smith Incorporated, and any of its officers, directors, affiliates, current or former employees, or any other persons that would otherwise be disqualified in connection with the Federal and Research Settlements, as defined in this Order, is hereby WAIVED.

Dated: 11-4-03

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of this Department in the District of Columbia this 4th day of November, 2003.



Lawrence H. Mirel, Commissioner
Department Of Insurance and Securities Regulation